

Vesting

Sun 4/5/2015 7:56 PM

Some questions regarding vesting have arisen in regard to a 26 year old, 6 lot subdivision. The planning board approved a subdivision of this property that included one residence and a seasonal, lake side campground. The applicant was required to close the campground if any lots were sold. The plan was recorded in 1988 but no lots were ever sold and none were ever given separate lot numbers by the town. The applicant improved the driveway into the campground and claimed to have met the town requirements for road upgrades necessary for the subdivision. Since then the campground closed and a developer has acquired the parcel. Questions regarding vesting have arisen. Is the 6 lot subdivision vested?

If not, is the new owner required to submit a new subdivision of the parcel that meets today's zoning and subdivision regulations? Does the Planning Board have the authority to make this determination and if not which board in town does?

Phil Auger
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Sun 4/5/2015 9:09 PM

To what degree does the subdivision comply with current zoning ?

Jim Bird
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Sun 4/5/2015 11:38 PM

I think it would depend on whether any time limitation was placed on the sub at that time. Now many towns are putting time limits but if none was put on it when done I don't think you can do so after the fact.

The road may be a different story depending on whether the town ever accepted it. If not it may need to meet current standards to be accepted - or they could just keep it as a private road.

John Segedy
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Mon 4/6/2015 6:28 AM

RSA used to say (and may still) 4 year lifetime on an unexecuted (my word) subdivision.

Jim Bird
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Mon 4/6/2015 6:49 AM

I believe this is the ruling RSA - <http://www.gencourt.state.nh.us/rsa/html/LXIV/674/674-39.htm> .

Lisa Linowes
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Mon 4/6/2015 8:59 AM

Seems that the campground component is irrelevant other than to use as a potential indirect indicator of intent. For the subdivision approval, were there any conditions imposed for active and substantial? If not, to what extent was the infrastructure required by the town and/or shown on plans completed within the 4 (or now 5) year window? I always understood the thresholds for vesting to be a percentage of infrastructure or completion or lot sales (0-30% no vesting, 30%-70% open for court interpretation, and 70%+-100%; vested), but was this assessment ever done by the town at the end of this period? Without formal documentation one surrogate measurement might be if the town changed its assessment of the parcel to include improvements such as roadways, etc.

As I recall the town has the option of extending the time period for vesting as well.

Tyler Phillips
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Mon 4/6/2015 9:04 AM

It's a complex issue since towns are not typically trying to speed up developmentand yet the future expiration of a subdivision approval is likely to do exactly that.

Jim Bird
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Mon 4/6/2015 10:20 AM

Phil,

In addition to [RSA 674:39, Five-Year Exemption](#) (used to be four years – see the **Vesting** heading on the [Laws, Rules, Cases](#) page in the OEP Resource Library for additional information), you might want to look at [676:4-a, Revocation of Recorded Approval](#).

Chris Northrop

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Mon 4/6/2015 10:55 AM

Phil: Be mindful that the law concerning whether or not this subdivision vested is the law in effect circa 26 years ago, not necessarily the current version of RSA 674:39. If I recall correctly, the Legislature extended the dates for certain projects during the 2009 financial/mortgage crisis as it became more difficult for approved projects to get financing. However, they did so only with respect to approvals issued within a certain specified time period. Those that had already expired remained so. Also, be mindful that it is not just a 4 or a 5-year exemption. If the active and substantial test is not met, the project may not qualify for the longer-term protection. Of course, that assumes that the active and substantial requirement was in effect 26 years ago, which I don't know off-hand.

The person with the authority to make the determination is usually the building inspector/code enforcement officer who has to determine whether or not the subdivision plan remains valid. In many Towns he or she would consult with the Town Planner or even the Planning Board.

You've presented enough facts in your scenario to recommend kicking this to the Town's attorney. This could be one of those situations where the Town either pays up front to get the correct advice, or it pays later if the wrong decisions are made.

Justin C. Richardson

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Tue 4/7/2015 9:02 AM

To all:

In this theoretical example, there is a developer that only comes before the PB because of an abutter's concerns. It is the position of the developer that they do not even have to be there, for the subdivision was approved in 1988 and the subdivision is vested, even though nothing has happened in 28 years other than maintaining a "driveway". They say that they met all the conditions of approval in the 1988 plan, which was recorded.

By today's standards, the lots would be considered substandard. Clearly the crux of this example is vesting. The answer is not clear to me as to WHO has the authority or responsibility to determine whether or not a subdivision is vested. The developer says they are, questions arise whether they are or not, and there everyone sits.

WHO has standing to take action (or to initiate action) to determine whether or not a subdivision is properly vested? BOA? PB? Selectmen? Building Inspector? Third parties? Abutters? The courts? WHO?

Donald Coker

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